HIGH COURT OF JAMMU AND KASHMIR
SRINAGAR

Case No: A.A.01/2003 **Dated** : 22ND JULY. 2014

M/S. NAHAMI AND CO ***VERSUS*** *UNION OF INDIA & ORS*

ORDER SHEET

CORAM:

HON'BLE MR. JUSTICE MUZAFFAR HUSSAIN ATTAR – *JUDGE.*

HON'BLE MR. JUSTICE DHIRAJ SINGH THAKUR- *JUDGE*

FOR THE PETITIONER/s : M/S. MOKSHAH KAZMI
FOR THE RESPONDENT/s: MR. S.A.MAKROO, ASGI.

(MUZAFFAR HUSSAIN ATTAR)

1/ Request/Application in terms of section 11(6) of the Jammu and Kashmir Arbitration and Conciliation Act 1997 (for short Act of 1997) was made by the applicant. This Application is registered as A.A.01/2003. Shri A.A.Sidique (Chief Engineer) was appointed as Arbitrator vide order dated 05th March, 2007. The Court, vide order dated 03rd March, 2010, allowed the CMP No. 22/2009 and permitted the applicants to place on record the Arbitration Award dated 11-12-2009. In terms of the same order, the parties were given liberty to file objections within two weeks.

02/ Hon'ble the Chief Justice, vide order dated 17-02-2014, made reference to larger bench for an authoritative pronouncement in respect of question of considerable importance, viz. "*whether an Appeal would be competent before the Court of District Judge or before the Single Bench of the High Court.*"

03/ The matter was listed before this Bench on 10-07-2014. It was directed to be listed again subject to orders of Hon'ble the Chief Justice.

04/ We considered the matter today.

05/ Perusal of record would show that respondent – Union of India alone has filed objections to the Award.

06/ In our considered view, the proceedings in this Application have not been conducted in accordance with the provisions of the Act of 1997. After the Arbitrator was appointed in terms of section 11(6) of the Act of 1997, the functions of Hon'ble the Chief Justice or his designate at that stage came to an end. Hon'ble the Chief Justice or his designate, in view of the scheme of the Act of 1997, more particularly, provisions contained in Chapter II of the Act of 1997, would not have seison or control over the proceedings.

07/ The publication of the Award, its form and contents, are delineated under Chapter VI of the Act of 1997. In terms of section 32 of the Act of 1997, the arbitral proceedings get terminated by final arbitral Award. Chapter VII of the Act of 1997 prescribes for recourse against the arbitral Award. Section 34 of the Act of 1997 provides for filing an Application for setting aside arbitral Award. Chapter VIII of the Act of 1997 deals with finality and enforcement of arbitral Awards. Section 35 of the Act of 1997 prescribes about finality of the arbitral Awards. The said section provides that subject to this part, an arbitral Award shall be final and binding on the parties and the persons claiming under that respectively. Section 36 of the Act of 1997 deals with enforcement of the arbitral Award and provides that where time for making an Application to set aside the arbitral Award u/s 34 has expired or such Application having been

refused, the Award shall be enforced under the Code of Civil Procedure, Samvat 1997 in the same manner as if it were a decree of the Court.

08/ Perusal of the record would show that the provisions of the Act of 1997 have not been followed in this case. It appears that the provisions of Arbitration Act, Samvat 2002, have been followed in this case.

09/ The cumulative effect of the aforesaid observations is that no Application, in terms of section 34 of the Act of 1997, has been filed.

10/ Be that as it may, this bench is not to return any finding on the competence of these proceedings. This bench has only to answer the reference.

11/ This bench has already considered identical question of law referred by Hon'ble the Chief Justice and has answered the similar reference in case A.A. 03/2011 connected with A.A. 22/2011 on 10th July, 2014. Answer to the reference in the case on hand is covered by the answer given in the aforesaid cases. Paragraph 17 of the order passed by this bench in aforementioned Applications is taken note of :

> "17/ In view of our above referred discussion, the Reference is answered as under :
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> *"In the State of Jammu and Kashmir, the jurisdiction, to entertain and decide an Application u/s 34 of the Jammu and Kashmir Arbitration and Conciliation Act 1997, when Arbitrator is appointed by the Chief Justice in terms of section 11(6), lies with both the District Judge as also with the High Court. A party, seeking to set aside the Award passed by the Arbitrator, can file Application u/s 34 of the Act of 1997 before the District Judge. Similarly an Appeal against the order of Arbitral Tribunal passed u/s 17 can be filed in terms of section 37 before the District Judge. The Appeal before the District Judge is competent and maintainable"*

12/ Registry to place the matter before Hon'ble the Chief Justice in view of the mandate contained in rule 33 of the Jammu and Kashmir High Court Rules 1999. Registry to also place copy of the order dated 10th July, 2014 passed in A.A. 03/2011 connected with A.A. 22/2011 on this petition.

TARIQ Mota
SRINAGAR.

22-07-2014 **(DHIRAJ SINGH THAKUR)** **(MUZAFFAR HUSSAIN ATTAR)**

JUDGE *JUDGE*